

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff

v.

Case No. 18-CR-62

BRIAN GANOS,
MARK SPINDLER,
SONAG COMPANY, INC. and
NUVO CONSTRUCTION COMPANY, INC.,

Defendants.

**DEFENDANT MARK SPINDLER'S MOTION TO ADJOURN THE JURY TRIAL UNTIL
AFTER BRIAN GANOS' SENTENCING HEARING SO THAT SPINDLER CAN
CALL GANOS TO TESTIFY WITHOUT GANOS INVOKING HIS
FIFTH AMENDMENT RIGHT TO NOT TESTIFY**

Defendant Mark Spindler, by and through his counsel, Kravit, Hovel & Krawczyk, s.c., moves this Court to adjourn the trial date in the above-captioned matter until after the sentencing of defendant Brian Ganos ("Ganos") so that Mark Spindler ("Spindler") can call Ganos as a witness and Ganos can testify free of Fifth Amendment concerns. The reasons for this motion are set forth with particularity below.

1. Defendant Spindler is charged with conspiracy to commit fraud and misprision of a felony. (Dkt. 25, Superseding Indictment, Counts 1 and 25.) Co-defendant Ganos was charged with 24 felony counts. (Id., Counts 1-24.) On June 3, 2019, Ganos and the United States of America filed a plea agreement in which Ganos

“voluntarily agrees to plead guilty to counts four and ten of the superseding indictment[.]” (Dkt. 154, ¶ 4.) On June 7, 2019, this Court accepted Brian Ganos’ change of plea.

2. Counsel for Spindler has conferred with counsel for Ganos and understands that Ganos will not testify if called as a witness by Spindler and would instead invoke his Fifth Amendment right to not testify in response to any questioning under oath that takes place prior to his sentencing and the dismissal of the 22 outstanding counts against him and the entire original indictment. If allowed to testify, Ganos would provide testimony that could directly exculpate Spindler.

3. Spindler has a Sixth Amendment right to present a defense. “The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant’s version of the facts as well as the prosecution’s to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution’s witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.” *Washington v. Texas*, 388 U.S. 14, 19 (1967).

4. Spindler must be allowed to present the exculpatory testimony of Brian Ganos to a jury. It would be fundamentally unfair and a violation of Spindler’s Sixth Amendment right to present a defense if this Court were to set this case for trial without ensuring that Ganos could be called as a witness and that he could testify freely.

5. The Court must adjourn the trial date for Mark Spindler until after Brian Ganos is sentenced and the remaining charges against him are dismissed or, if the Government wishes to preserve the current trial date, Ganos should be provided with immunity under 18 U.S.C. § 6002 so that he could be compelled to testify and “may not refuse to comply with the order on the basis of his privilege against self-incrimination.”

Dated at Milwaukee, Wisconsin this 7th day of June, 2019.

KRAVIT, HOVEL & KRAWCZYK S.C.

s/Brian T. Fahl

Brian T. Fahl

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